

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
ATLANTA BRANCH OFFICE
DIVISION OF JUDGES

UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING AND
PIPE FITTING INDUSTRY OF THE UNITED
STATES AND CANADA, LOCAL 189, AFL-CIO
(GENERAL TEMPERATURE CONTROL, INC.)

and

Cases 9-CB-11311
9-CB-11312

UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING AND
PIPE FITTING INDUSTRY OF THE UNITED
STATES AND CANADA, AFL-CIO
(GENERAL TEMPERATURE CONTROL, INC.)

and

JASON A. ABBOTT, AN INDIVIDUAL

Patricia R. Fry, Esq. for the General Counsel.
Roger L. Schantz, Esq. and *Mark D. Tucker, Esq.*
(*Benesch, Friedlander, Coplan & Aronoff LLP*),
of Columbus, OH, for Respondent Local 189.
Robert P. Curley, Esq. (*O'Donoghue &*
O'Donoghue LLP), of Philadelphia, PA, for
Respondent International.

DECISION

Statement of the Case

JOHN H. WEST, Administrative Law Judge. This case was tried in Columbus, Ohio, on August 23 and 24, 2005.¹ The charges in Cases 9-CB-11311 and 9-CB-11312 were both filed on February 22 by Jason Abbott against United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 189, AFL-CIO (Respondent Local) and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (UA) (Respondent International), respectively, and the consolidated complaint was issued on May 31. The complaint alleges (1) that Respondent Local violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended (Act), by Fred Scolieri, at Respondent Local's union hall, threatening an employee with fines and revocation of his union membership because the employee refused to engage in "salting"² for Respondent Local, (2) that Respondent International violated Section

¹ All dates are in 2005 unless otherwise indicated.

² This practice involves union members, with union approval, working for non-union companies as part of an attempt to organize those companies.

8(b)(1)(A) of the Act, by Jerome O'Leary, at the Radisson Hotel in Worthington, Ohio, threatening an employee with revocation of his union membership unless he salted for Respondent Local; and (3) that since about August 30, 2004 pursuant to an agreement between Respondent Local and General Temperature Control, Inc. (GTC), Respondent Local is the
 5 exclusive source of referrals of employees for employment with employer GTC; and that Respondent Local violated Section 8(b)(2) of the Act in that it attempted to cause and caused an employer to discriminate against employees in violation of Section 8(a)(3) of the Act in that since about September 2004 Respondent Local failed and refused to refer Abbott to
 10 employment with GTC, and on or about January 5 Respondent Local caused GTC to discharge Abbott. Both Respondents deny violating the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by Counsel for General Counsel, Respondent Local, and Respondent International, I make the following:

Findings of Fact

I. Jurisdiction

It is admitted that GTC, a corporation, has a place of business in Canal Winchester, Ohio where it is engaged in the installation, service, and sales of mechanical systems and heating, ventilation and air conditioning systems. It is also admitted and I find that during the 12 months before the complaint was issued, GTC purchased and received at its facility goods valued in excess of \$50,000 directly from points outside Ohio; that GTC is an employer engaged
 25 in commerce within the meaning of Section 2(2), (6) and (7) of the Act; and that Respondent Local and Respondent International have been labor organizations within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The Facts

When called as a witness by Counsel for General Counsel Scolieri, who is the business manager of Respondent Local, testified that when employees sign up at the Union hall they
 35 basically come in, and the Local assigns them a number on a long-term and a short-term list; that the employee actually signs the list; that the Local has a bid system and the individual must be in the Hall ready to go to work in order to bid a job with his or her number; that the hiring hall procedures are in the agreement between Mechanical Contractors Association of Central Ohio, Inc. on behalf of contractors engaged in the plumbing and pipefitting industry who employ
 40 members of Local 189, and Respondent Local 189, General Counsel's Exhibit 2, effective June 1, 2003 through May 31, 2008; that when an individual registers he or she is required to give his or her signature; that General Counsel's Exhibit 3 is the sign-in sheet for the light commercial "FAVRET," which is a stand-alone agreement with a contractor by that name, and the mechanical equipment servicemen and apprentices; that individuals know to sign the list
 45 because that is the procedure in the hiring hall process; that when a Mechanical Equipment Service (MES) apprentice finishes his apprenticeship, he becomes a MES Serviceman; that the highest classification an MES service person can get is journeyman status; that there is a light commercial residential agreement between Respondent Local and the contractor's association and GTC is part of that contract; that the wage rates for MES apprentices and servicemen are
 50 specified in the State MES agreement; that if a member of Respondent Local asks to sign the out-of-work list, he would ask the member what his union card indicated with respect to whether he was a journeyman, serviceman or apprentice; that with respect to MES, sometimes the

contractor finds someone who has the required skills, and the contractor has that person go down to the union hall so they can be referred out; that paragraph 6 on page 31 of General Counsel's Exhibit 2, the above-described agreement, specifies, as here pertinent, that "[i]f, upon request, the Local Union of the United Association is unable, within seventy two (72) hours, to supply Journeymen, including Journeymen with special skills, the employer may secure Journeymen for employment from any other source" (transcript page 54); that this has been done and when it occurs he "signs him up physically on the out-of-work list and [he] puts him to work" (transcript page 55); that the employer telephones him when the employer finds someone, the person has to come to the union hall, the person fills out an application at the union hall and he assigns the person a number, and if the person is not a member of another UA local, he assigns the person a number and sends them back to the employer with a referral slip to go to work; that if the person is a member of another UA local, he puts them out as a traveler after they deposit their travel card with Respondent Local; that no one goes to work unless they have a referral slip from Local 189; that at the time he testified he guessed that the Respondent Local had five or six qualified MES journeymen who were out of work; that last year Robert Billings, who at the time was co-owner of GTC, told him that he needed an MES serviceman; that he sent some members resumes to GTC and he was advised that GTC did not want the individuals based on the resumes; that General Counsel's Exhibit 4 is the current residential light commercial agreement between the contractors and the Respondent Local; and that an individual has to sign up to get on the out of work list.

When called by Respondent Local, Scolieri testified that he was President of the Respondent Local from 1986 to 1988, business agent from January 1992 until May 1997, and he has been the elected business manager of the Respondent Local from May 1997 to the present; that contractors who have signed the collective bargaining agreement have to go through the Respondent Local's exclusive hiring hall referral process; that at the time of the trial herein there were probably 225 journeymen out of work and in 2003 the number was up around 300 journeymen on the bench (out-of-work list); that at the time of the trial herein there was one MES serviceman on the bench, a few light commercial journeymen, and one mechanical equipment service apprentice off work; that Respondent Local's Exhibit 1(a) is the National Service and Maintenance Agreement which refers to the State Mechanical Equipment Service (MES) Agreement in order to set wage rates; that the State and National Agreements both contain the classifications of journeyman, serviceman, apprentice, and tradesman; that it is his understanding that paragraph 18 of the National Agreement means that the classification and the wage rate of an individual cannot be reduced,³ and therefore he could not put Abbott out as an MES serviceman because he was a MES journeyman; that an MES serviceman is paid 70 percent of the MES journeyman rate; that Respondent Local's Exhibit 1(c), Article XIV, are the referral and hiring procedures of Local 189, which indicate, among other things, that Local 189 is the sole and exclusive source of referrals of applicants for employment; that someone who wants to get on the out- of- work list has to fill out an application form, compare Respondent Local's Exhibit 1(n); that the only way a person can register is to come in and sign the necessary paperwork; that a person has to be in the Union hall to bid to go out on a posted job; and that there is no out-of-work list specifically for MES employees but there is a list for journeymen.

On cross-examination, Scolieri testified that General Counsel's Exhibit 6 is Respondent Local's long-term out-of-work list for building trades journeymen which has 259 people listed for

³ The paragraph reads "[n]o employee shall receive any change in classification as defined in Article IX or any reduction in basic wage rate or fringes as a result of this Agreement or any approved Schedule 'A.'"

the month of February 2004; that Local 189 does not have a separate list for MES journeymen⁴ and he did not believe that there were any MES journeymen on the list; that Respondent has 80 to 100 MES servicemen working and, on the day he testified at the trial herein, he only had one MES serviceman out of work, Eddington, and that person had previously worked for GTC and he did not believe that that person was welcome at GTC; that Respondent Local has between 900 and 1,100 building trades members working; that his members would not be happy if he signed up a lot of out of work non-members on the journeymen's list; and that a business manager has to stand for election every three years but he is going to retire.

Abbott testified that he is a member of Local 234, Plumbers and Pipefitters of Jacksonville, Florida; that he served a five-year apprenticeship and received his journeyman card; that he worked as a journeyman in Florida a little over one year; that before he left Florida he worked for Memorial Hospital in Jacksonville for three and one half years doing service and repair work on heating and air conditioning units; that for the last two years at Memorial Hospital he had the position of supervisor and he had a crew of three working under him; and that his union card, General Counsel's Exhibit 13, reads as follows:

2005-2006

JASON A ABBOTT
DVJ MES JOURNEYMAN

10-01-1998 1172675
Initiated card number

LOCAL 234 JACKSONVILLE FL

Abbott further testified that the "DVJ MES" on his card means Division of Mechanical Equipment Service; that he moved back to Ohio because he has family in Ohio and he is a single parent who needed some assistance with his daughter; that in August 2003 he contacted Scolieri, the business manager at Local 189 in Columbus, telling him that he was a heating and air conditioning journeyman and giving him a short rundown of his experience; that Scolieri told him that he did not have any work and there was not anything he could do to help him at that time; that he subsequently moved to Ohio, the last week in August 2003, and a few days later he contacted Scolieri again to let him know that he was now living in Ohio and to inquire as to whether any position had opened up; that he took a position with Atlas Butler Heating and Cooling (Atlas), which is a small non-union residential contractor; that he telephoned Local 189 in January and April 2004, speaking to Scolieri and inquiring whether or not any jobs had opened up; that he believed that each time he telephoned Scolieri he told him that he was a heating and air conditioning journeyman and he gave Scolieri a short rundown of his experience; and that Scolieri may have mentioned that he had six people on the bench who on paper were qualified to do HVAC (heating, ventilation, and air conditioning) work but he did not recall whether Scolieri gave their classifications.

On cross-examination, Abbott testified that he moved to Ohio on August 23, 2003 and he started working for Atlas on September 2, 2003; and that, as a fall back, he sent Atlas his resume before he moved to Ohio.

⁴ In an affidavit Scolieri gave to the National Labor Relations Board (Board), he indicated that Local 189 has a light commercial and service list. Scolieri testified that at the time of the trial herein there was one man on the MES service list, namely Jim Eddington.

In July 2004 Abbott found out by word-of-mouth that GTC, a union contractor, was looking for some people at \$26 an hour for their service department. He testified that he interviewed with Brian Woodard at GTC; that Woodard asked him for a resume and he gave one, General Counsel's Exhibit 14, to Woodard the following week when he interviewed again with him and Ken Newman; that he was asked to fill out an application, and they reviewed his experience and training; that Woodard told him that he had to discuss the matter with his business partner and he would get back to him; that a couple of days later Woodard telephoned him, telling him that he was prepared to hire him, make him an offer, but Scolieri told him that he could not hire him, and Scolieri needed to speak with him; that the resume he gave to Woodard earlier indicated that he was a journeyman and Woodard had a copy of his union card which indicated that he was a journeyman; that later that day he telephoned Scolieri, telling him that he was calling regarding the position at GTC; that Scolieri then got into the issue over his classification, trying to determine what he was as far as UA standing was concerned; that Scolieri asked him where he was working and when he told Scolieri that he was working for Atlas, Scolieri got upset and accused him of coming to Ohio and taking his men's work; that Scolieri told him that he needed to come in and to bring his resume; that about one week later in July 2004 he went to Local 189 and spoke with Scolieri and give him his resume; that Scolieri said that he had checked on his union card and according to his status he could not take the job for GTC that was being offered since it was for a lower scale; that he asked Scolieri if it was possible to work for a lower scale, at least for the time being, and Scolieri said that there was no way to do that since the UA International would not allow it; that Scolieri said that Billings was trying to get him at a cheaper rate and GTC could not do that; that he asked Scolieri if there was an unemployment list that he could sign; that Scolieri told him that he had so many people out of work he "didn't have anything I could sign up on" (transcript page 264); that Scolieri said that on paper he had six AC people who were out of work, and he believed that one may be qualified but Scolieri did not mention a list; that toward the end of this conversation Scolieri said that "for the time being he'd like for me to work as a salt for the Local until I had somewhat repaid my dues for working for Atlas Butler" (transcript page 266); that Scolieri gave him the name, Gary Newell, and number for the State organizer in the area, and Scolieri then telephoned Newell to tell him that he should expect a telephone call from Abbott; that Scolieri said that "he should file charges ... against me with the UA. Against my book. He made a comment that he's not going to do that at that time because he'd gotten in trouble for doing that before" (transcript page 266); that Scolieri told him that he could avoid charges by salting; and that when he asked Scolieri about signing an unemployed list as a traveler "or any status" (transcript page 267), Scolieri said that "he didn't have [a] list for me to sign. He had too many people out of work. (Id.)

Later that afternoon Abbott telephoned Newell. Abbott testified that Newell told him that he had a salting agreement which he needed Abbott to sign, Newell needed to get some information from Abbott, and if he refused to help Newell, Newell would file the paperwork and press charges against Abbott's membership; that subsequently Newell came to his home and asked him to turn over a three-ring binder which contained Atlas' employee roster with the addresses and phone numbers of every employee in the company and a customer list with the customers' names, addresses, phone numbers, and contact information; that he refused to give the information to Newell because he had signed an agreement not to release the company information to anyone outside the company that would cause a loss of revenue to Atlas, and if it was proven that there was a loss of revenue due to a release, he could be personally liable for the damages; that he explained his reason for refusing to turn over the information to Newell; that he gave Newell a resume; that Newell asked him for a list of things that he wanted the Union to assure him about salting; that after reviewing the list, Newell said that the Union could not deliver on anything he listed; that Newell asked him for another resume because Newell said he was going to try to get work for him through the Cambridge, Ohio local and that Newell

would get back to him; that Newell never did get back to him; that after speaking with Newell, he told Woodard about what was going on and that it appeared at that time that he would not be able to work for GTC; that he told Woodard that Scolieri told him that the GTC job which was being offered was for a lower pay rate, Scolieri was upset with him, Scolieri wanted him to salt and put him in touch with Newell, and he was going to have to salt before he could work out of Local 189; that Woodard told him to get in touch with him if he was able to get things straightened out with Local 189; that subsequently Billings telephoned him and offered him a position as a controls computer programming technician; and that he accepted the position which paid \$22 an hour plus health insurance and a 401K after a year.

On cross-examination, Abbott testified that when he spoke with Scolieri in July 2004 Scolieri told him that there was a problem because he was a journeyman and GTC wanted to hire him as a serviceman; that he told Woodward what Scolieri said; that about one month later, in August 2004, while he worked as a control technician for GTC he told Billings what Scolieri said regarding why he would not allow him to work in the service department; that both Woodward and Billings were aware that Scolieri said that the classification issue was part of the problem; that it was his understanding that GTC just wanted to hire him into the service department and it did not matter to them what classification he was referred out as since they were behind on service work; that salting never came up as a topic in his first meeting with Scolieri in July 2004 until he told Scolieri that he worked for a non-union contractor when he first moved to Ohio; that Scolieri was aware of the fact that he worked for Atlas when he spoke with Scolieri by telephone to arrange the meeting in July 2004; that in July 2004, a year after he arrived in Ohio, he attempted to deposit his traveler's card in Local 189; and that when he met with Scolieri in July 2004 he told him about the non-disclosure agreement he had with Atlas.

On redirect, Abbott testified that after he told Woodard and Billings that Scolieri said that there was a problem with his classification, the impression that he got from Woodard and Billings was that as far as money was concerned they were going to pay whatever the Hall referred him out as; and that neither Woodard nor Billings said that GTC could not hire him unless the Hall agrees to reduce his classification.

When called as a witness by Counsel for General Counsel, Scolieri testified that in July 2004 he had a conversation with Woodard, who at the time was co-owner of GTC, about Abbott distributing resumes.

Newman, who became GTC's service manager in February 2005 after Billings bought out Woodard, testified that in the summer of 2004 he worked under Woodard, who was a co-owner and the service manager of GTC; that Woodard told him that he was a member of the Union; that Billings ran the construction side of the company and Woodard ran the service side of the business; that GTC installed plumbing, mechanical systems, duct work and HVAC equipment in new buildings and it serviced the equipment after it was installed; that GTC had service contracts to (a) maintain on a quarterly basis its customers' chillers, boilers, and heating and cooling equipment, and (b) repair these items when they would not operate; that in the summer of 2004 GTC needed employees on the service side; that he has telephoned Scolieri and asked him to fax resumes; that Scolieri did not tell him that he needed to put his request in writing; that he has never told Scolieri that he did not want someone who was a journeyman because GTC did not want to pay that much and therefore the Union should only send individuals who were servicemen and below; that GTC does not have maximum wage rate that it would pay for a serviceman; that he refers to one of GTC's employees, Mike Britch, as a serviceman and Britch's union card indicates that he building trades journeyman; that GTC needs somebody that has three to five years experience in commercial HVAC style work; that an MES journeyman would fill GTC's needs; that an MES serviceman with three to five years

experience is the same as an MES journeyman as far as he is concerned; that in the summer of 2004 GTC was looking for MES service people and Woodard placed an ad on the HVAC webpage; that Abbott came in for an interview and he and Woodard interviewed Abbott; that Abbott had an MES journeyman union card; that it was his impression that Abbott was the best candidate that GTC had at the time; that he told Billings and Woodard that, in his opinion, Abbott would be perfect and would help out the service department; that neither Billings nor Woodard said that Abbott would be too expensive; and that Abbott was not hired by GTC as a serviceman but rather Abbott was hired to do visual controls, most of which is new construction. On cross-examination, Newman, who is not in the Union, testified that the only two classifications that he looks for are MES journeyman and MES apprentice; that in his mind there are only two classifications; and that Britch is the only GTC employee who is paid the full (building trade) journeyman rate.

Woodard, who has been a member of Local 189 since 1981 and was co-owner of GTC until February 4 when he sold his share to Billings, testified that he and Billings founded the business in June 1987; that he was service manager of GTC; that he obtained employees for the service department from Local 189 or off the street when the Union could not supply them; that when GTC hired off the street, the individual still had to go through Local 189 to work at GTC; that GTC had mostly MES servicemen and one MES journeyman, Britch, who worked for GTC for at least five years; that Local 189 set the wages for GTC's service employees; that Billings normally contacted Local 189 when GTC needed service people; that in the summer of 2004 he interviewed Abbott, with Newman present; that he told Billings that Abbott was a good candidate, and Billings told him to contact Scolieri and find out what Abbott's classification was because Abbott's union card was different than Local 189's; that GTC was looking for an MES serviceman and he guessed that Abbott ended up being in building trades; that Scolieri told him that Abbott's card was a building trades card and that was not really what GTC was looking for; that Scolieri also told him that, with building trades, he would have to refer Local 189's members who are on the bench with the qualifications out first "before anyone would come through as a traveler" (transcript page 112); that building trade was the wrong qualification since GTC was looking for an MES serviceman; that Scolieri did not say that if GTC wanted to hire Abbott, he would have to sign up at the hall and go to the bottom of the list, and since he did not do this, he could not be referred out; that he asked Scolieri if he could change Abbott's card "and go down to an MES service, and he said no" (Id.); that when he told Billings what Scolieri said, Billings hired Abbott to do some computerized work on controls on the construction side, which was not anything union people did; and that he had no idea what work Abbott was doing for GTC. On cross-examination by counsel for Respondent Local, Woodard testified that Abbott's Florida union card listed MES on it, Billings did not want to pay Abbott at the journeyman rate, but rather GTC was looking for an MES serviceman. On redirect, Woodard gave the following testimony:

Q. When you asked for an MES Journeyman and Mr. Arrington was sent to you, did Mr. Billings approve that request for a Journeyman?

A. At that time, we weren't talking too much and I didn't ask him.

Q. So you felt it was okay to pay the extra because you needed somebody?

A. Well, he was an MES serviceman.

Q. But you had a call in to the Hall for a Journeyman?

A. No. A Journeyman would [be] what I call a pipefitter Journeyman, and then the

other classification would be an MES serviceman. I called for an MES serviceman and they sent me Jim Arrington.

Q. And Jim Arrington was a Journeyman?

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A. No, he was a serviceman.

Q. Does Local 189 have a classification for MES Journeyman - a separate classification?

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A. I'm not sure.

Q. You've been a member of the Local for how long?

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A. Since '81. [Transcript pages 121 and 122]

On further cross-examination, Woodard testified that it is common knowledge that if you want a referral from Local 189's hiring hall, you have to go down and sign a referral sheet. Except for two years, Woodard has always worked in Local 189's area.

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Billings, who with his wife is part owner of GTC, testified that he has been with GTC for about 18 years; that GTC has about 51 employees; that GTC is a mechanical contractor, performing sheet metal service, construction, and installation of mechanical systems (heating, ventilating, air conditioning, and refrigeration) in commercial and industrial buildings; that he oversees the construction side of the business; that he holds a classification with the Union, namely refrigeration journeyman and he was in the service division; that about 25 of the 40 or so people who work on the construction side are members of Local 189; that in the last two years he has hired approximately 10 to 12 building and construction people through Local 189, which includes journeymen and apprentices; that he telephones Local 189 and requests that some people be sent out; that GTC operates under the National Service and Maintenance Agreement, and wage rates are figured out for employees by referring to Schedule A of the state collective bargaining agreement; that in the summer of 2004 he and Woodard were partners, and while Woodard managed the service side, he managed the construction side; that at the end of July or the beginning of August 2004 Woodard informed him that he had about 400 hours of maintenance that he could not get done because he did not have enough personnel to get it accomplished; that he was informed that Local 189 did not have anybody available in service at the time; that Woodard and Newman interviewed some people who heard of the opening by word of mouth; that Woodard told him that he interviewed Abbott and he wanted to hire him; that GTC did not have a maximum wage rate that it was willing to pay Abbott; that GTC has annual, semi annual, and quarterly service contracts, and it also bills by the hour at a rate of more than 35 to 40 dollars; that he telephoned Scolieri and told him that Woodard found a service guy from the Jacksonville local who was qualified; that Abbott's resume was forwarded to Scolieri; that a few days later he told Scolieri that he spoke with Abbott's Business Manager in Jacksonville, Kingsley Thorpe, and he gave Abbott a glowing review; that Scolieri "said he would have to check with the UA [International] and it would be a lot easier to bring him [Abbott] in if he was non-Union than him having ... [a] book. He'd had a problem in the past with the UA after bringing a guy in from another Local" (transcript page 141); that a few days later Scolieri said "it didn't look good because he [Abbott] had a book out of another Local and it created a lot of problems for us" (transcript pages 141 and 142); that he thought he told Scolieri that GTC had 400 or 500 hours of preventative maintenance work that it could not get done, and GTC was against the wall; that at a later date he spoke with Scolieri in his office and Scolieri told him that Local 189 had some people out of work, Abbott would create some political problems, he

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could get Abbott into the Local if he was willing to be a salt, Abbott would not agree to be a salt so Abbott would not be working out of Local 189, and Abbott was not going to be employed by GTC; that he told Scolieri that GTC's service was in trouble, it needed help, and the out-of-work members did not have the necessary additional skills and Abbott did; that Scolieri said that Gary Newell, a UA organizer, had met with Abbott, Abbott refused to salt for Newell, and because of that "[a]s long as [Scolieri] was Business Manager, he [Abbott] would not work out of this Local" (transcript page 145); that at that time there was never any discussion of classification; that in the February or March 2005 timeframe Scolieri, in a letter, asked if GTC wanted an MES serviceman or an MES journeyman but he did not respond to this letter because five or six months earlier he told Scolieri that Abbott had served an apprenticeship in the Jacksonville Local; that it was a known fact that Abbott was a journeyman; that everyone in GTC's service department, including MES journeymen GTC has employed in the past, is referred to as a serviceman by both GTC and customers; that he did not remember Scolieri ever saying that he could not send Abbott out as a serviceman because he had a journeyman card, and they never discussed Abbott's wage rate; that he was willing to pay Abbott "[w]hatever the going rate was at the time for the classification that they sent him out as" (transcript page 147)⁵; that after Scolieri indicated that GTC could not hire Abbott, and since there were no qualified service personnel available at Local 189, GTC hired service personnel off the street; that the National Agreement indicates that the Union had 48 hours to try to fill an employer's request and if it could not, the employer has the right to hire off the street, with the understanding that the Union can test the individual; that when he told Scolieri that Abbott has exactly the skills that GTC's service department needed, Scolieri said that since Abbott would not work as a salt he was not coming through Local 189; that Scolieri did not say that Abbott could go down and sign up as a journeyman on the out of work list, GTC would have to file a request to see if anyone at the hall had special qualifications, and then Abbott would have to sign a bid sheet if he wanted to get on; that Scolieri did not say that he could not send Abbott out because he had not been down to the Hall to sign up; that in November 2004 he sent letters to Scolieri asking for a serviceman because GTC refers to its service people as servicemen even if they are journeymen; that in early 2005 he spoke with Jerry O'Leary at the UA International about Abbott and O'Leary told him that it was a Local matter, that he spoke with Scolieri, and Abbott had to work as a salt in order to be a member of Local 189; and that when GTC hires someone off the street it sends them to the Union hall to get a work referral slip before they are placed on the payroll.

On cross-examination, Billings testified that Respondent Local's Exhibit 1(a) is the National Service and Maintenance Agreement, which is effective from January 1, 2001 to August 1; that he signed the National Service and Maintenance Agreement, which at page 3 includes the MES employee classifications, namely service journeymen, servicemen, service apprentices, and tradesmen; that as set forth in the Ohio State Agreement, Respondent Local's Exhibit 1(b), MES servicemen are paid 70 percent of what journeymen receive; that the Ohio State Agreement, just like the national agreement, sets forth the four above-described classifications of MES employees; that wages were never discussed with the Union regarding Abbott; that GTC paid Abbott, who is not working under the National Service and Maintenance Agreement, an automation technician's rate and not a full journeyman's rate; that he knew that

⁵ Billings gave the following testimony:

Q. Did you ever tell Mr. Scolieri that you wanted to hire Jason [Abbott], but only at a service rate - - the reduced rate?

A. I never discussed rate with Mr. Scolieri, no.

Q. Did he ever tell you that you'd have to pay him the full Journeyman rate if you wanted him?

A. No. [Transcript page 153]

Abbott was a journeyman; and that

5 We even spoke to Mr. Scolieri about hiring him [Abbott] under the light commercial agreement and bringing him out under the light commercial agreement, which is a different pay scale, which allows building trades Journeymen to work under that agreement and you pay full fringes on them, and you pay them a different pay rate.

10 We said however we need to get our service department taken care of, we need to get service persons out. And he said he wouldn't refer him under the light commercial agreement either. [Transcript page 195]

15 Billings further testified on cross-examination that he never, in writing, asked Scolieri if GTC could hire Abbott as an MES Journeyman and he did not remember if he did this verbally; that in all correspondence he referred to serviceman because he uses that as a generic term; that if Scolieri had said that GTC could only hire Abbott as a MES Journeyman then GTC would have hired Abbott as an MES Journeyman; and that during the conversations he had with Scolieri he said that Abbott would not be referred out of Local 189 unless he became a salt, it was never classification. In finishing his cross-examination by Respondent Local's attorney, Billings gave the following testimony:

20 Q. You mentioned that one other possibility that you explored was to have him work under the light commercial agreement, correct?

25 A. We discussed it with Fred, yes.

Q. How would that rate compare to the MES Journeyman rate, more or less?

A. Would have been the same fringe benefits and ...

30 Q. What about the pay rate?

A. Would have been a different pay rate.

35 Q. Would have been a different pay rate, right?

A. We can pay him whatever we wanted. If we had Mr. Abbott's ...

40 Q. What did the contract provide? Does the contract provide for a lower pay rate than an MES Journeyman?

A. It provides for a lower pay rate and ...

45 Q. Exactly. And in fact, you are not paying Mr. Abbott right now at a Journeyman rate are you?

A. We're paying him an automation technician rate.

Q. You are not paying him at a Journeyman rate, are you?

50 A. We are paying him an automation technician rate.

Q. Are you paying him - -

MR. SCHANTZ: Your Honor, I am going to ask you to instruct him to answer the question.

5 JUDGE WEST: Say yes or no.

Q. Are you paying Mr. Abbott at a Journeyman rate?

A. No. [Transcript pages 199 and 200.]

10 On additional cross-examination, Billings testified that the meaning of paragraph 18 on page 4 of the National Service and Maintenance Agreement, Respondent Local's Exhibit 1(a), is that the Union does not want to change classifications for people like Abbott, who have reached the level of journeyman, back to serviceman and have his wages cut 30 percent; and that

15 through the whole process, it has never been an issue of what the man's pay rate was. Mr. Abbott is qualified to be a serviceman, a Journeyman. We are willing to pay him a Journeyman's rate, we are willing to pay him a serviceman's rate.

20 We have at issue the fact that we were told pointblank that you cannot have this individual, he is not going to work out of this Hall because he won't salt. [Transcript page 204]

25 When called as a witness by Respondent Local, Scolieri testified that in June or July 2004, Woodard telephoned him and told him that he had a good person for Local 189, namely a journeyman who was dropping off resumes in the area; that Woodard said "I know I can't hire this guy as a serviceman," (transcript page 415) and he told Woodard that he could not according to the agreement; that he told Woodard to have the person telephone him or send him his resume; that he did not remember Abbott coming in to meet him in person; that he did
30 remember that three to five days after he spoke with Woodard, Abbott telephoned him; that he did not threaten to revoke Abbott's union membership if he refused to engage in salting for Local 189; that in June or July 2004 when Abbott telephoned him after Woodward had telephoned, he asked Abbott how he was living and Abbott told him that he was working non-union; that Respondent Local has a light commercial/residential agreement, Respondent Local's
35 Exhibit 1(k), which was in effect when Abbott worked for Atlas; that he told Abbott that he could not work non-union, he would have to wait his turn, there were about 230 people out of work, and he would go to the end of the list; that he told Abbott that if he was caught working non-union he could be charged; that he gave Abbott the telephone number of organizer Newell with the expectation that Abbott could be used as a salt; that he did not bring up salting until after
40 Abbott told him that he was working non-union; that he never told Billings that if Abbott did not work as a salt, then he would not refer him out of Local 189; that he never threatened to file charges against Abbott based on his refusal to act as a salt; that he did not refer Abbott to GTC because he "couldn't reduce his classification. All they wanted him for was a low dollar man" (transcript page 431); and that Abbott never signed the out-of-work list and never offered to sign
45 it.

On cross-examination, Scolieri testified that when Abbott telephoned him, he told Abbott that GTC was interested in hiring him as an MES serviceman, he was a journeyman, and he could not be referred out as a MES serviceman; that he told Abbott that there was a hiring hall
50 procedure and he would be at the end of it; that Abbott said that he wanted the job and he told Abbott "[t]he best thing I can do for you pal, is tell you to possibly work a non-Union [job] and we'll try to get you in" (transcript page 463); that he told Abbott that "when that Hall cleared out

and I can you get [sic] a job, I'll do the best I can" (transcript pages 463 and 464); that there were only a handful of service qualified individuals on the list at that time, and the majority were unemployed plumbers, pipefitters, and welders; that he did not remember Abbott coming in to the Union hall and talking to him in person; that he was not saying that it did not happen but rather he was just saying that he did not remember it; that applicants who come in asking how they can get work through the Local Union Hall do get a copy of the hiring hall rules; that people who come into the Union hall and ask if the Local has any work do not always receive the hiring hall rules which are in the contract; that when most people see that there are 250 people on the out-of-work list, they move on and go to another local; that he did not remember a traveler in the time he has been with the Local wanting to go on the out-of-work list; that he tried to tell Abbott to wait until he had an opportunity to put him out on a building trades job, a high dollar job that he was qualified for; that it is not often that people come back to his office; that he did not remember Abbott coming back to his office and speaking with him in person; and that five or six years ago he brought charges against a member of another Local for working non-union and this does not happen often.

By letter dated October 11, 2004, General Counsel's Exhibit 10, Billings advised Scolieri as follows:

Recently our company employed an automation technician to perform programming of electronic controls. The gentleman has informed us that he has 6 plus years of unionized service training in the HVAC field. Our office would like to have him placed in the Mechanical Equipment Service Program as a serviceman. The best use of his talents is to further the organized labor agenda by him performing service tasks, under the banner of the United Association. Our office would appreciate your help in this matter.

Billings testified that he used the term "serviceman" in the letter because GTC calls all of its service people servicemen, that the rate of pay did not make any difference to GTC, and that his goal was to get a serviceman. Also Billings testified that in October 2004 Scolieri did not indicate that the problem existed because Abbott was classified as a journeyman. Indeed, Billings did not remember any response by Scolieri to this letter. On cross-examination Billings testified that serviceman is a generic term and GTC refers to its service people as servicemen. Scolieri testified, when called by the Respondent Local, that he interpreted the third sentence of Billings' letter to mean just what it says, namely a serviceman and that would involve reducing Abbott's classification which is something he could not do.

When called as a witness by Counsel for General Counsel, Scolieri testified that during the September and October 2004 negotiations on the current residential light commercial agreement, Billings, who participated in the negotiations, talked to him about wanting to hire Abbott; and that in the affidavit he gave to the Board he indicated "I asked Billings how I could put this guy to work when there were many others out of work. Billings had no calls in for referral" (transcript page 72)

When called as a witness by Respondent Local, Scolieri testified that some months later, during contract negotiations for the residential/light commercial agreement, Billings asked him "[w]hy can't you let this poor man come out and work as a serviceman" (transcript page 417), he told Billings that he could not since he did not have the ability to reduce Abbott's classification but he would telephoned O'Leary, who he believed could not do it either; and that he told Billings, Woodard, and Abbott that if Billings had a call-in for a journeyman serviceman and that call did not get filled, then he would have the ability to help Abbott; and that Billings was not willing to pay Abbott a journeyman's rate. On cross-examination Scolieri testified that in the affidavit he gave to the Board, as noted above, he indicated that he "asked Billings how I could

put this guy [Abbott] to work when there were many others out of work and Billings had no calls in for a referral" (transcript page 472).

5 Late in December 2004 Abbott telephoned Scolieri. Abbott testified that Billings told him that he felt that he had exhausted all avenues in his attempt to get Abbott into GTC's service department, and he asked him to contact Local 189 to see if something could be worked out; and that when he telephoned Local 189 Scolieri

10 explained that as far as he was concerned doing digital control work, he felt like that was some of his work. He felt like I was working contrary to their bargaining agreement doing Union work outside the Union.

15 And that I had a chance to salt for him and I'd turned my back on him. As far as he was concerned, he said if he could catch me, he was going to burn me. [Transcript page 280 - 281]

20 Abbott further testified that it was his understanding that "burn you" meant that because Scolieri felt that it was union work, Scolieri was going to file charges against Abbott's membership; that Scolieri told him that if he was dissatisfied with his position, he could go to the International of the Union; that later that day he telephoned O'Leary at the Union's International; and that O'Leary told him that he would contact him about when they could meet.

25 O'Leary, who is a UA International Representative, testified that in the first part of January 2005, Scolieri telephoned him and asked him if it was possible to have an MES journeyman go out as an MES serviceman at a lower rate; that he told Scolieri that it could not be done; and that if it was done, all the other contractors would want the same concession, and it would, in his opinion, violate paragraph 18 of the national agreement.

30 Abbott and O'Leary met on January 4 at the Radisson Hotel in Worthington, Ohio. Abbott testified that no one else was present; and that he had a tape recorder in his pocket but he did not tell O'Leary that the conversation was being recorded.⁶ On cross-examination Abbott

35 ⁶ The transcript of the recording was received as Joint Exhibit 1. It is 14 pages. Pertinent portions read as follows:

....

JERRY O'LEARY - Why didn't you want to work as a Salt when Fred wanted you to?

JASON ABBOTT - I didn't want any part of that. No ... part of that whatsoever. And there is nothing, and I've read this book from cover to back, and there's nothing in there that says I have to work as a Salt to work for any local.

40 JERRY O'LEARY - You're right on that. You're right on that.

....

JERRY O'LEARY - What you have to ... I talked to Fred this afternoon, I said to Fred, 'If he's willing to work as a salt can we work this thing out?' And he said 'Yes.' The problem is you want it to be all your one way.

45

JERRY O'LEARY - What happens down the road if you lose your book Jason? Then where are we at?

JASON ABBOTT - How am I going to lose my book?

50 JERRY O'LEARY - I'm just thinking out hypothetically, where are you at then? All that hard work that you went through for five years of your apprenticeship out the window.

JASON ABBOTT - If I keep my dues up, I'll never lose my book.

Continued

testified that he did not mention the non-disclosure agreement he had with Atlas when he met with O'Leary; that he faxed his resume, Respondent International's Exhibit 1, to O'Leary; and that he did not get back to O'Leary after this meeting because he was terminated by Woodard 9 days later.

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O'Leary testified that he received a telephone call from Abbott who wanted to meet; that he asked Abbott to forward his resume and he told Abbott that he would call him back to set up a meeting; that he did telephone Abbott back and met with him; that Abbott's resume indicates that he worked for Atlas and he knew that this company was non-union; that he could have filed charges under section 194(a) of the UA constitution against Abbott for working non-union but he did not do this because he was trying to work something out with Abbott; and that he suggested

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JERRY O'LEARY - Oh not necessarily. Not necessarily.

JASON ABBOTT - Well, what other scenario would ...?

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JERRY O'LEARY - Well, we'll see, I mean if your going to say by god it's gotta be Jason's way and no other alternatives to it, its gotta be your way and nobody else's, that's to be considered you're jeopardizing your book.

JASON ABBOTT - I don't understand how. Because I'm not

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JERRY O'LEARY - I've been through this with another guy

JASON ABBOTT - I'm not working for a non-union contractor, I'm not doing plumbing, I'm not doing pipefitting, and I'm not doing service work. I don't understand

JERRY O'LEARY - At some point in time you will be. Let's not kid each other.

....

25

JERRY O'LEARY - So the option that you chose here could run out, and Fred saying 'Trust me,' I don't know where he said that, but it didn't work out. I don't know one situation where it didn't work out that as long as the guy played ball with him, he'd play ball back, and it worked out. He has brought several people in that way, there's some justification that he can put to his members and say the guy's working over here, he's helping us out, he's giving us information, rather than just a person who comes in right, you know, from Florida, and 'boom' he goes right to work.

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....

JASON ABBOTT - Well he won't take my Travelers card.

JERRY O'LEARY - He doesn't have to.

JASON ABBOTT - Well, that's a gray area that he doesn't have to.

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JERRY O'LEARY - He doesn't have to.

JASON ABBOTT - That's a gray area. It does say that he should accept it.

JERRY O'LEARY - He does not have to take your Travelers Card, so

....

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JERRY O'LEARY - What I would do - it's just a suggestion Jason - I would think about it and ... this is January ... the cooling season is ... coming up, we're right in the middle of heating season ... now might even be a good time, but let me put some feelers out with some of the other non-union contractors just to see what's out there as far as a number but it will be a contractor that we would want you to go to work. I've got a couple that I would suggest to you that probably would pay you what you make right now and I wouldn't wait any longer than three months to make a decision here, to try to get you in the fold here and so forth, and like I say we will sit down with Fred eyeball to eyeball so that there's no misunderstanding and you know what to expect - I know what the game plan is and also Fred and I will back whatever we agree to up to make sure it happens.

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....

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Think it over. Don't wait any longer than three months. We can have a second meeting. It doesn't mean that we have to have a hard decision at that point.

to Abbott that he consider salting because

although he's working supposedly in a non-bargaining situation for a union contractor, that union contractor may have a situation where they're falling behind in work, and they may want him to do ... collective bargaining unit work.

And when that happens, and potentially it looked like it almost happened from some of the documents we saw yesterday [at the trial herein], that I didn't want him to get into a situation where if he refused the owner that he would be fired.

I wanted to be able to protect him. And that was the reason for that. [Transcript pages 372 and 373]

O'Leary further testified that when they met Abbott did not admit that he worked for a non-union company in Ohio; that Abbott did not raise the issue that there was a confidentiality agreement regarding Atlas; that he hoped Abbott would call him back because he could have potentially put him with up to three non-union contractors other than Atlas; that Abbott never did get back to him; that he did not discuss Abbott's situation with Billings; that the "DVJ" on Abbott's union card means Divisional which is different than a building trades journeyman; and that he never threatened Abbott.

On cross-examination, O'Leary testified that purging a problem by salting is not specifically addressed in the UA constitution; that Abbott has a divisional MES journeyman union card which means that while he is an MES journeyman, he is not a building trades journeyman; that there is very little difference in the scope of work of a building trades journeyman as opposed to a divisional service journeyman, and he could not explain why they have different ones.

Subsequently, O'Leary testified that when he asked Scolieri what was the situation with Abbott, Scolieri told him that Abbott was working for Billings in a non-union position; that he asked Scolieri if Abbott worked as a salt, could he "get in the fold" (transcript page 395); and that Scolieri did not say anything about Atlas.

When called as a witness by Counsel for General Counsel, Scolieri testified that in January 2005 he had two conversations with Woodard, who at the time was part owner of GTI. Apparently Abbott's name came up during at least one of the conversations and subsequently Woodard came down to the union hall. Scolieri testified that when Woodard came to the union hall he told Woodard "[d]on't get me in trouble about firing Abbott." (transcript page 74).

Newman testified that in January 2005 Woodard told him that he terminated Abbott, saying that if he did not let Abbott go, the Union was going to file charges against him and he had too much time in to jeopardize his retirement.

Woodard testified that about January 5 Scolieri told him that he wanted to meet with him about Winchester Mechanical and Abbott; that he did not know where Abbott was working; that when he was on vacation he tried to have Newman send Abbott to take care of a service emergency and Billings would not let Abbott go out on the service call because Abbott was not covered by the contract; that Scolieri told him that members were complaining about Abbott; and that the next day he called Abbott in and told him that he was terminated. On cross-examination by counsel for Respondent Local, Woodard testified that Winchester Mechanical was a non-union company that Billings had started, this concerned him, and it was a big factor in his deciding to sell his share of GTC to Billings; that he told service employees that he

terminated Abbott because he was suspicious that Abbott was working on pipefitter jobs and he was not a member of Local 189; that a portion of his affidavit reads "Scolieri did not suggest that I terminate Abbott's employment or suggest ... any action on my part" (transcript page 120); and that Scolieri "did not tell me to terminate ... [Abbott] at all" (transcript page 121).

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When called by Respondent Local, Scolieri testified that he did not cause the termination of Abbott as alleged in the involved complaint; that he did not ask a representative of GTC to fire Abbott; and that he never demanded that Billings or Woodward fire Abbott. On cross-examination Scolieri testified that while doing some checking on the internet, he discovered that a license was issued by the State of Ohio for a non-union company by the name of Winchester Mechanical owned by Bob Billings; that he asked Billings about it and Billings said that his son owned Winchester Mechanical; that he was told that Abbott was terminated and Woodard needed to speak to him; and that he then telephoned Woodard.

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Abbott testified that on January 13 Woodard called him on the job and asked him to come into his office around 3 p.m.; and that Woodard

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explained that he was going to have to lay me off. He'd been contacted by Mr. Scolieri in regards to me and Winchester Mechanical and explained that he himself personally, Mr. Woodard, could be facing Union charges on behalf of both issues.

He couldn't afford that at that point and he was going to have to let me go.
[Transcript page 346]

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Billings testified that around January or February 2005 Local 189 filed a charge with the Board alleging that Winchester Mechanical was an alter-ego of GTC and they had common management and did each other's work; and that after all kinds of documents were given to the Board, it issued a notice dismissing the charge.

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By letter dated February 11, General Counsel's Exhibit 11(a), Billings advised Scolieri "In accordance with Article 11-Union Security please establish Mr. Abbott as a member in good standing with the Union as outlined in this section of the agreement and the applicable Federal Law."

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Also on February 11 Billings forwarded the following, General Counsel's Exhibit 11(b):

RE: MES Serviceman

Dear Mr. Scolieri:

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Our Service manager and Sales manager interviewed Mr. Dickerson a few months ago, please refer us any other candidates that you have that meet the qualifications as outlined below. The person must be able to complete all of the requirements.

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Qualifications: MES Serviceman

Service and maintenance of all commercial refrigeration, air conditioning and heating equipment including rooftop units of all sizes, low pressure steam and water boilers, all package air handling units, all air and water systems, control systems and built up refrigeration and air conditioning systems.

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When called by Respondent Local, Scolieri testified that when he read this letter he thought that

GTS was looking for an MES serviceman.

Additionally, by letter dated February 11, Respondent Local's Exhibit 1(e), Billings made the following request:

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RE: MES Serviceman

Dear Mr. Scolieri:

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Please send our office any resumes for MES Servicemen that you have available for hire.

And by letter dated February 11, Respondent Local's Exhibit 1(m), Billings indicated the following:

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RE: MES Serviceman

Dear Mr. Scolieri:

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Please inform Mr. Kelly that Jason Abbott was at Dear Creek Lodge and instructed John Johnston on how to charge a refrigerant unit and performed DDC Control wiring. Jason Abbott will not perform any work under our contractual agreement with Local 189.

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Billings testified on cross-examination that he forwarded this letter because Mr. Kelly from the Union had been out on the job asking what Abbott was doing on the job.

By letter dated February 14, General Counsel's Exhibit 11(c), Scolieri indicated as follows:

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**Re: MES Serviceman
Service Journeymen**

Dear Mr. Billings:

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There seems to be some confusion on your letters faxed to Local Union 189. Your last letter mentioned Article II - 'Union Security' which is in the Local Building Trades Contract. However, most of your past letters referred to the MES Servicemen classification. This classification is in the National Service and Maintenance Agreement. You have been faxed 2 resumes of LU#189 servicemen members unemployed.

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If needing manpower please consult both agreements for classification of employees and hiring procedures and use of employees.

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When called by Respondent Local, Scolieri testified that he sent this letter because GTC was skirting the issue and he was advising GTC that if it wanted a journeyman, GTC should put a call in for a journeyman with his requirements.

By letter dated February 15, General Counsel's Exhibit 11(d), Billings advised as follows:

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RE: Clarification

Dear Mr. Scolieri:

The apparent confusion may lie in the fact that the National MES Agreement on page 1 paragraph 3 is the Union Security Section and labeled Article 11. Please review that section and sentence 2 of the paragraph as written. I hope this will clear up the confusion and you will act in accordance with the agreement.

By letter dated February 15, General Counsel's Exhibit 11(e), Scolieri advised Billings as follows:

If you need Building Trades Journeyman Serviceman please fax me a letter with all the qualifications that you require and we will post it per the Agreement for unemployed LU #189 Building Trades Journeymen Serviceman members.

If you need a MES Serviceman I have previously sent you 2 resumes of unemployed MES Servicemen that are LU #189 Members. Please review those 2 individuals and let me know of your decision.

If you should have any questions, please contact me.

Billings testified that before this he was not required to fax a letter with the qualifications GTC required but rather he would telephone Scolieri and tell him what skills GTC required; that he did not respond to this letter because he felt that they had rehashed this issue so many different times starting in August 2004; that GTC was willing to hire a journeyman; and that Scolieri never attempted to send GTC a journeyman.

According to the testimony of Abbott, sometime after he filed charges with the Board in this case on February 22, Scolieri notified him by mail that he had to sign up if he wanted to get referred. Abbott testified that in his Florida Local he was not aware of any requirement that a person had to go into the Union hall in order to get a referral from the Local's business manager; and that after Scolieri questioned his Union card, he asked his Florida business manager about it and the business manager, Thorpe, told him that the card means just what it says, namely that he was a mechanical equipment service journeyman. On redirect Abbott testified that before he filed the Board charges Scolieri never offered him the opportunity to come into the Hall and sign up because he was never going to get referred out unless he signed up.

By letter dated February 23, Respondent Local's Exhibit 1(I), Scolieri advised Abbott as follows:

I received your correspondence to the U.A. that was recently faxed to me. Please be advised that our Collective Bargaining Agreement sets forth a referral system.

The referral system sets forth a procedure for an applicant seeking work to register in the appropriate group in the agreement on the 'out-of-work' list. To my knowledge you have never appeared at the hiring hall to sign the 'out-of-work' list as required in our Collective Bargaining Agreement. You are welcome to do so if you are seeking work in the jurisdiction of Local # 189.

Newman sponsored General Counsel's Exhibits 7 and 8. The former is a fax dated April 6 in which Newman indicates that GTC wanted to hire Martin Severance, whose resume was included, as "MES." The latter is the referral for Severance from Scolieri dated April 12. On cross-examination, Newman testified that Severance is paid two dollars over the MES scale,

which is 70 percent of the journeyman's scale; and that Severance is paid at the serviceman rate. On redirect Newman testified that if Severance was upgraded to a journeyman, GTC would have to pay him the journeyman's scale, and - based on his skills - that probably would not be a problem.

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When called by Respondent Local, Scolieri testified that as demonstrated by Respondent Local's Exhibit 1(n), Severance was not a journeyman and had not passed the journeyman examination when he was referred out to GTC; and that Severance was referred out to GTC as a serviceman. On cross-examination, Scolieri testified that GTC found Severance and sent his resume over to Local 189; that General Counsel's Exhibit 7 is the fax, dated April 6, and resume of Severance which GTC forwarded to him; and that as indicated by Respondent Local's Exhibit 1(n), Severance came to Local 189's hall and signed his application on April 12.

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Analysis

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Paragraph 7(a) of the complaint alleges that about December 21, 2004, Respondent Local, by Fred Scolieri, at Respondent Local's union hall, threatened an employee with fines and revocation of his union membership because the employee refused to engage in salting for Respondent Local.

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On brief Counsel for General Counsel contends that unions may enforce properly adopted internal rules when they reflect a legitimate union interest, impair no policy Congress has imbedded in the labor laws, and are reasonably enforced against union members who are free to leave the union and escape the rule, *Scofield v. NLRB*, 394 U.S. 423, 430 (1969); that the Board recently held that the preferential dispatching of employees who engage in salting violates the Act in that it breaches the duty of fair representation owed to those who use an exclusive hiring hall, by rewarding those who engage in union activity to the detriment of users who chose not to engage in such activity, *IBEW Local 48 (Oregon-Columbia Chapter of National Electrical Contractors of America)*, 342 NLRB No. 10 p.7 (2004); that a union is not free to selectively and arbitrarily enforce a rule against working non-union, *Operating Engineers Local 3 (Specialty Crushing)*, 331 NLRB 369 (1998); that Scolieri was going to burn Abbott because he refused to salt; that threatening to retaliate against a hiring hall applicant because he refrained from organizing activity, like salting, violates Section 8(b)(1)(A) of the Act, *IBEW Local 48*, supra; that such threats interfere with the employee's right to refrain from union activity; that if Abbott was performing union work for GTC, Scolieri's threat to "burn" him cannot be construed as a lawful warning since (a) Scolieri had not allowed Abbott to register to be sent out on union jobs, (b) the contract remedy is a grievance against the company, and (c) Scolieri did not point to any constitutional provision or by-law which Abbott might have violated by performing union work for GTC; and that Scolieri was threatening to enforce a rule against Abbott in a way which interfered with his ability to work, so that he could not escape it.

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Respondent Local on brief argues that this paragraph fails to allege an unfair labor practice, and even if it does, it is not supported by the record; that the Board in *Operating Engineers Local 181 (Raymond Construction)*, 269 NLRB 611, 627 (1984) held that a union can lawfully subject a member to union discipline for seeking his own employment from a signatory employer and accepting a job without first clearing his employment with the union; that in *Meat Cutters Local 593*, 237 NLRB 1159 (1978) the Board held that a union does not commit an unfair labor practice by threatening to take disciplinary action against members who actively oppose or refuse to assist the local in its organizing efforts; that the alleged threat to "burn" him was not made because Abbott refused to salt but rather it was made in response to Abbott's admission that he had worked for a non-union contractor for one year in violation of §194 (A) of the UA Constitution and he was working for a signatory contractor in a purportedly non-

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bargaining unit position; that the threatened union discipline involved working for a non-union contractor or for a union contractor, without being referred, performing union work; that such a threat is legitimate in that a union has the right and obligation to protect the work within its jurisdiction and to insist on compliance with its hiring hall rules, *Plumbing & Pipefitting, Local* 389, 176 NLRB 402 (1969); and that Scolieri did not threaten to file charges against Abbott unless he agreed to salt, which is evidenced by the fact that no such charges were ever filed.

Paragraph 7(a) refers to December 21, 2004 at Respondent's union hall. Abbott testified that he was in Respondent's union hall in July 2004 when Scolieri advised him that if he salted, he could avoid charges for working in the industry for a non-union company, Atlas. Abbott did not testify that he was at Respondent Local's union hall on December 21, 2004. Rather Abbott testified that he telephoned Scolieri on December 21, 2004. This paragraph of the complaint alleges that Scolieri threatened Abbott with fines and revocation of his union membership because Abbott refused to engage in salting for Respondent Local. Abbott testified that Scolieri

explained that as far as he was concerned doing digital control work, he felt like that was some of his work. He felt like I was working contrary to their bargaining agreement doing Union work outside the Union.

And that I had a chance to salt for him and I'd turned my back on him. As far as he was concerned, he said if he could catch me, he was going to burn me. [Transcript page 280 - 281 with emphasis added]

To Abbott, in saying "if he could catch me, he was going to burn me," Scolieri was referring to Abbott, who was not working in a collective bargaining position for GTC, doing work covered by the involved collective bargaining agreement. Obviously the "burn me" would not occur if Scolieri did not catch Abbott doing union work for GTC. When this statement was allegedly made, Abbott was working for GTC, a union contractor, without being referred and Scolieri was allegedly taking the position that the work Abbott was doing for GTC was work that union members should be doing. Abbott refused to salt 5 months earlier. Between July and December 2004 no union charges had been brought against Abbott for refusing to salt or for working for a non-union contractor, Atlas, before Abbott was hired by GTC. Both subjectively and objectively the alleged threat by Scolieri to "burn" Abbott if Scolieri could catch him did not refer to Abbott's refusal to salt. The language used could only refer to the work that Abbott was doing for GTC. Since the alleged threat does not refer to Abbott's refusal to salt, the record evidence does not support the allegation. It will be dismissed.

Paragraph 7(b) of the complaint alleges that about January 4, Respondent International, by Jerome O'Leary, at the Radisson Hotel in Worthington, Ohio, threatened an employee with revocation of his union membership unless he salted for Respondent Local.

On brief Counsel for General Counsel contends that O'Leary repeatedly (a) linked Abbott's refusal to salt with the possibility of union charges and the loss of membership, and (b) conditioned Abbott's ability to obtain a job through Local 189 or even within the jurisdiction of Local 189 on Abbott's willingness to cooperate by salting; that threatening less favorable treatment to Abbott if he refused to salt, must be found to violate the Act; and that by stating that they could work it out if Abbott salted and refusing to give any other option for working out of Local 189's exclusive hiring hall, O'Leary made it clear that to work in Local 189's jurisdiction, Abbott had to engage in union activity.

Respondent International on brief argues that it is well established that nothing in the Act precludes a union from instituting its own rules for maintaining intraunion discipline and thus

maintaining union solidarity, *Scofield*, supra; that Section 8(b)(1)(A) of the Act specifically includes a proviso, namely "[t]hat this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein"; that a local union can require that a member participate in salting activities as a condition of membership, *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967), and *Meat Cutters Local 593*, 237 NLRB 1159 (1978); that salting offered Abbott the opportunity to put his past constitutional membership violation behind him and reestablish himself as a good member; that as long as Abbott remains a member of the Union, the Union has the right to expect him to follow the UA Constitution and support the UA's organizational efforts; that the salting here does not reward Abbott with referral preferences so this is not the same situation as covered by *IBEW Local 48*, supra; that here salting was suggested as a way for Abbott to obtain immediate employment and at the same time purge his constitutional violation; that any alleged threats to discipline Abbott resulted from his working non-union and not his refusal to engage in salting activities; and that unions may discipline a member for breaches of internal rules without restraining or coercing employees within the meaning of Section 8(b)(1)(A).

When Abbott came to Ohio he did not go to Local 189 and turn in his traveler's card. Rather, he went to work in the involved industry for a non-union company, Atlas, notwithstanding the fact that there was a residential agreement in effect. Even after Scolieri threatened him with being charged for his conduct, Abbott continued to work for Atlas until GTC hired him. Before he was hired by GTC, Abbott asked Scolieri to allow GTC to hire him as an MES serviceman notwithstanding the fact that Abbott was an MES journeyman. When Scolieri denied this request, GTC hired Abbott as an automation technician to program electronic controls. When Scolieri threatened to burn him if he caught him doing union work for GTC, Abbott appealed to O'Leary. Abbott and not O'Leary initiated the January 4 meeting. And Abbott, unbeknownst to O'Leary brought a tape recorder and turned it on so he could record the conversation. Since there is a tape recording and a stipulated transcript of the conversation, there is no dispute as to what O'Leary said. Did O'Leary threaten Abbott with the revocation of his union membership unless he salted for Respondent Local? In my opinion, the evidence of record does not support this allegation. Portions of the above-described transcript bear repeating, namely

JERRY O'LEARY - Why didn't you want to work as a Salt when Fred wanted you to?

JASON ABBOTT - I didn't want any part of that. No ... part of that whatsoever. And there is nothing, and I've read this book from cover to back, and there's nothing in there that says I have to work as a Salt to work for any local.

JERRY O'LEARY - You're right on that. You're right on that.

....

JERRY O'LEARY - What happens down the road if you lose your book Jason? Then where are we at?

JASON ABBOTT - How am I going to lose my book?

JERRY O'LEARY - I'm just thinking out hypothetically, where are you at then? All that hard work that you went through for five years of your apprenticeship out the window.

JASON ABBOTT - If I keep my dues up, I'll never lose my book.

JERRY O'LEARY - Oh not necessarily. Not necessarily.

JASON ABBOTT - Well, what other scenario would ...?

JERRY O'LEARY - Well, we'll see, I mean if your going to say by god it's gotta be Jason's way and no other alternatives to it, its gotta be your way and nobody else's, that's to be considered you're jeopardizing your book.

JASON ABBOTT - I don't understand how. Because I'm not

....

JASON ABBOTT - I'm not working for a non-union contractor, I'm not doing plumbing,

I'm not doing pipefitting, and I'm not doing service work. I don't understand
 JERRY O'LEARY - At some point in time you will be. Let's not kid each other.

....

5 O'Leary was not telling Abbott that he would lose his book for refusing to salt. O'Leary was
 telling Abbott that at some point he again would be violating the UA Constitution when he told
 Abbott "[a]t some point you will Let's not kid each other." Abbott already had a track record.
 He continued to work for Atlas even after Scolieri mentioned the possibility of filing charges
 10 against him. O'Leary knew Atlas was a non-union contractor. O'Leary believed that Billings
 would eventually push the envelope and Abbott would again act against the interests of
 Respondent Local and its membership, or possibly be fired. He was offering Abbott an
 alternative. I do not believe that what O'Leary said could reasonably be interpreted to mean that
 O'Leary threatened Abbott with revocation of his union membership unless he salted for
 Respondent Local. Since the record does not support this allegation, it will be dismissed.

15 Paragraph 8(b) of the complaint alleges that since about September 2004, Respondent
 Local has failed and refused to refer to employment with Employer GTC employee Abbott
 because he refused to engage in salting for Respondent Local and for reasons other than the
 failure to render the periodic dues and the initiation fees uniformly required for membership in
 20 Respondent Local.

On brief Counsel for General Counsel contends that by refusing to allow Abbott to
 register for work or be referred on a request unless he first agreed to salt, Respondent Local
 breached its duty of fair representation and violated Section 8(b)(1)(A) and 8(b)(2) of the Act,
 25 *Plumbers Local 247 (Inland Industrial)*, 332 NLRB 1029 (2000); that the Board has found that
 retaliating against employees by withholding dispatches in order to punish their refusal to
 engage in union organizing activity violates the Act, *Service Employees Local 9 (American
 Maintenance)*, 303 NLRB 735 (1991); that here salting was described as a way to get around
 30 members' objections to the referral of a traveler while about 250 building trade journeymen
 members were on the out-of-work list; that Respondent Local's unlawful motivation is
 demonstrated by Scolieri's refusal to allow Abbott to register and by Scolieri's failure to give any
 information about the operation of the exclusive hiring hall; that Respondent Local has failed to
 prove that it would have taken the same action if Abbott had not refused to salt; and that
 Respondent Local's action with regard to referring Abbott is inconsistent with its duty of fair
 35 representation and violated Section(b)(1)(A) of the Act.

Respondent Local on brief argues that this allegation is not supported by the record; that
 Woodard, who was responsible for hiring service employees testified that GTC did not want to
 40 hire an MES Journeyman because it did not want to pay the higher wages; that Woodard
 attempted to get Scolieri to refer Abbott out as an MES serviceman and Scolieri refused,
 advising Woodard that the National MES agreement prohibited lowering a journeyman's
 classification; that Abbott made the same request and Scolieri denied it; that subsequently
 Billings made the same request and Scolieri told him that he could not do it; that notwithstanding
 all this, Billings' above-described letters indicate that he continued trying to get Scolieri to refer
 45 Abbott out as an MES serviceman; that Billings' testimony that to him MES serviceman refers to
 MES journeyman is not credible in that (a) it is at odds with Woodard's testimony that GTC did
 not want to hire an MES journeyman because it did not want to pay the higher wages, (b)
 Billings knew the classifications of service employees contained in the National MES
 agreement, and he knew that classification is the most important factor in determining an
 50 employee's wages, (c) even after both Scolieri and Abbott told Billings that Abbott's
 classification was an issue and GTC could not hire him as an MES serviceman, Billings
 continued to refer to the position in writing as an MES serviceman, and never from July 2004 to

the time of the trial herein did he request the referral of an MES journeyman, and (d) Billings' belated claim that he would have paid Abbott at the journeyman's rate is belied by his attempt to instead have Scolieri refer Abbott out under the residential light commercial agreement which would have meant that Abbott would have been paid at a rate less than the MES journeyman rate; that if GTC had requested the referral of an MES journeyman, that request would have been posted at the hiring hall for bidding by our-of-work applicants, and a member must be physically present in the hiring hall to be referred to an employer; that Abbott never signed, asked to sign, or otherwise asked to be placed on Local 189's out-of-work list, despite being expressly offered the opportunity to do so; that Abbott did not sign the list, because he would have been at the bottom of that list and Abbott wanted immediate work; and that there is no evidence that Abbott was ever in the hiring hall to be referred to GTC.

In my opinion the evidence of record does not support the allegation that Respondent Local unlawfully failed and refused to refer Abbott to GTC because he refused to engage in salting for Respondent Local. At the very outset of GTC's request for a referral of Abbott, his classification was cited as a problem. Woodard wanted to hire him as an MES serviceman and not a journeyman. Abbott asked Scolieri to let him be referred as an MES serviceman. And Billings, even after he was placed on notice that GTC's request to have Abbott referred out as an MES serviceman was denied, tried to get Abbott referred out under the residential agreement at a wage lower than an MES journeyman. Billings' belated assertion, which is not credited, that he would have paid MES journeyman wages to Abbott must be viewed in the light of the fact that Billings did not even reply to Scolieri's February 15 written request, namely, "[i]f you need Building Trades Journeyman Serviceman please fax me a letter with all of the qualifications that you require." Since the evidence of record does not support this allegation, it will be dismissed.

Paragraph 8(c) of the complaint alleges that about January 5, Respondent Local caused Employer GTC to discharge Abbott because he refused to engage in salting for Respondent Local and for reasons other than the failure to render the periodic dues and the initiation fees uniformly required for membership in Respondent Local.

On brief Counsel for General Counsel contends that Scolieri's implied suggestion that Abbott should be terminated is sufficient to show a violation; that Scolieri's uncorroborated testimony that he first called Woodard after Abbott was fired is rebutted by Woodard whose testimony is supported by Abbott and Newman; and that whatever words were used by Scolieri, the effect was to cause Abbott's termination.

Respondent Local on brief argues that Woodard, who was called as a witness by General Counsel, testified that no one at Local 189 asked that Abbott be terminated; that Scolieri testified that he had no involvement in the termination, he never asked or demanded GTC to terminate Abbott, and he did not learn of Abbott's termination until after it occurred; and that there is a complete lack of evidence supporting General Counsel's allegation that Local 189 caused Abbott's termination from GTC.

Does the record evidence support the allegation that Respondent Local cause Employer GTC to discharge Abbott because he refused to engage in salting for Respondent Local? I do not believe that it does. Indeed, in my opinion it has not been shown that Respondent Local caused Abbott's termination for any reason. Abbott had refused to salt long before January 2005 and it has not been shown Respondent Local filed any charge against Abbott for refusing to salt or tried to get Abbott fired before the date alleged. In my opinion the refusal to engage in salting for Respondent Local was not the cause of Abbott's termination. What brought this all to a head in January 2005 was that Scolieri discovered that a license was issued by the State of

Ohio for a non-union company by the name of Winchester Mechanical owned by Bob Billings. Respondent Local was upset enough about this to file a Board charge. At about the same time Scolieri told Abbott that he believed that the work he was doing for GTC was union work, and if he caught him, he was going to "burn" him. Additionally, members were complaining about Abbott. As Woodard testified, Scolieri told him that he wanted to meet with him about Winchester Mechanical and Abbott. Undoubtedly, Scolieri pointed out to Woodard that he was a member of Respondent Local. And undoubtedly whatever Scolieri said led Woodard to conclude that union charges could be filed against him for what was going on with respect to Winchester Mechanical and Abbott. In view of the fact that he had too much time in as a member to jeopardize his retirement, as he told Newman, Woodard decided to address both issues raised by Scolieri. As he testified, Winchester Mechanical was a big factor in his deciding to sell his share of GTC to Billings. The Board eventually dismissed Respondent Local's charge regarding Winchester Mechanical. So it would appear that Woodard overreacted to Scolieri's expressed concern about Winchester Mechanical. Similarly, Woodard overreacted to Scolieri's expressed concern about Abbott. Woodard testified that he told service employees that he was suspicious that Abbott was doing union work. Woodard did not want to be held accountable by Respondent Local if this was true. But Woodard also testified that while he was on vacation he asked Newman to have Abbott do some service work and Billings would not let Abbott go out on the call because Abbott was not working under the collective bargaining agreement. This had to raise doubts in Woodard's mind as to whether Billings would ever allow Abbott to do union work. Woodard testified that at the time he did not know where Abbott was working. Woodard did not properly investigate the situation to determine whether Abbott was indeed doing union work. Woodard acted in haste. He caused something to happen before it was expected, warranted, needed or desired. As he explained to Abbott when he laid him off, he believed that he personally could be facing union charges with respect to Winchester Mechanical and Abbott. But as he testified, in his affidavit to the Board he indicated that "Scolieri did not suggest that I terminate Abbott's employment or suggest ... any action on my part" (transcript page 120); and that Scolieri "did not tell me to terminate ... [Abbott] at all" (transcript page 121). This is why Scolieri, when Woodard came to the union hall, said to Woodard "[d]on't get me in trouble about firing Abbott." (transcript page 74). Woodard went to the union hall after he fired Abbott. The deed was done and Scolieri, who first learned about it after the fact, did not want anyone pointing a finger at him. As noted above, Counsel for General Counsel on brief argues that Scolieri's implied suggestion that Abbott should be terminated is sufficient to show a violation, and whatever words were used by Scolieri, the effect was to cause Abbott's termination. The evidence of record does not support this. The evidence of record does not refute the testimony of Woodard, who was called by General Counsel, that "Scolieri did not suggest that I terminate Abbott's employment or suggest ... any action on my part" (transcript page 120); and that Scolieri "did not tell me to terminate ... [Abbott] at all" (transcript page 121). Abbott acted in haste on his own. Since the record evidence does not support this allegation, it will be dismissed.

Conclusions of Law

1. The Respondent Local and the Respondent International are labor organizations within the meaning of Section 2(5) of the Act.

2. GTC is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Neither Respondent violated the Act as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁷

ORDER

5 The complaint is dismissed.

Dated, Washington, D.C.

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John H. West
Administrative Law Judge

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50 ⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.